IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 18-292
)	
ROBERT BOWERS)	

REPLY TO GOVERNMENT'S RESPONSE TO MOTION TO SUPPRESS NO. 14

Defendant Robert Bowers, through undersigned counsel, filed a Motion to

Suppress

. (ECF 301.)

In response, the government raises a factual dispute regarding whether Mr. Bowers had a reasonable expectation of privacy in his

. It additionally argues that any

Fourth Amendment violation is excused by the inevitable discovery and good faith doctrines. Mr. Bowers submits this reply and asks this Court to hold an evidentiary hearing to resolve the disputed factual issues.

I. Mr. Bowers had a reasonable expectation of privacy in his

The government challenges whether Mr. Bowers had a reasonable expectation of privacy in his . (ECF 349 at 6-9.) The law governing reasonable expectation of privacy is well-established. Fourth Amendment standing "requires that the individual challenging the search have a reasonable expectation of privacy in the property searched . . . and that he manifest a subjective expectation of privacy in the property searched [.]" *United States v. Baker*, 221 F.3d 438, 441 (3d Cir.

2000). For the objective prong, the Court asks "whether the individual's expectation of privacy is 'one that society is prepared to recognize as reasonable." *Bond v. United States*, 529 U.S. 334, 338 (2000) (quoting *Smith v. Maryland*, 442 U.S. 735, 740 (1979)). Regarding the subjective prong, the Court asks "whether the individual, by his conduct, has exhibited an actual expectation of privacy; that is, whether he has shown that 'he [sought] to preserve [something] as private." *Id*.

To the extent the government challenges whether the medical records at issue are, in fact, Mr. Bowers' records, the discovery provided by the government indicates

To the extent the government is disputing whether Mr. Bowers had a reasonable

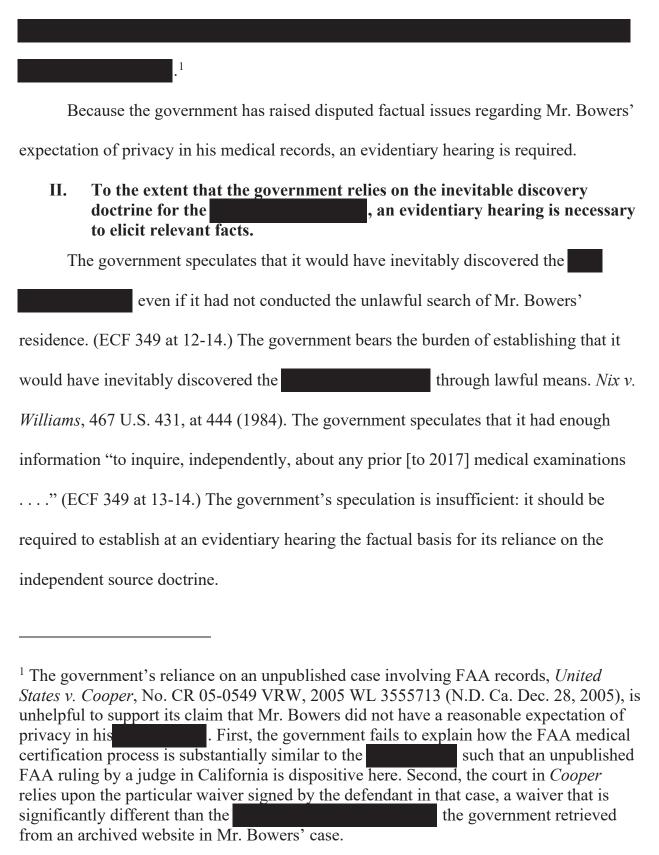
expectation of privacy in his

(ECF 349 at 4, n.1; *id.* at Exh. 2), an evidentiary hearing is required. Even if the was in fact the policy in effect when Mr.

Bowers sought the , the government incorrectly asserts that Mr.

Bowers

(ECF 349, at 4.) The records provided by the government in discovery indicate only that,



III. Good faith does not apply.

The government bears the burden of establishing that the good faith exception excuses any unlawful search. *United States v. Rodriguez*, No. 13-619, 2014 WL 4413606, at *4 (E.D. Pa. 2014). It cannot simply cite good faith and assert the conclusion that "the affidavit, if deficient at all, was not so deficient as to prevent an experienced agent from reasonably relying on it." (ECF 349 at 17-18.) As the Third Circuit recognizes, "Good faith is not a magic lamp for police officers to rub whenever they find themselves in trouble." *United States v. Zimmerman*, 277 F.3d 426, 438 (3d Cir. 2002) (internal citation omitted). The government has not met its burden of establishing good faith and the Court, therefore, should suppress the evidence seized.

Respectfully submitted,

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